



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0010; Notice 2]

Sumitomo Rubber USA, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Sumitomo Rubber USA, LLC (SRUSA), has determined that certain Sumitomo Kelly brand commercial truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles*. SRUSA filed a noncompliance report dated January 3, 2017. SRUSA also petitioned NHTSA on January 31, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5310, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Sumitomo Rubber USA, LLC (SRUSA), has determined that certain Sumitomo Kelly brand commercial truck tires do not fully comply with S6.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles* (49 CFR 571.119). SRUSA filed a noncompliance report dated January 3, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. SRUSA also petitioned NHTSA on January 31, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published with a 30-day public comment period, on April 20, 2017, in the *Federal Register* (82 FR 18684). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2017-0010."

II. Tires Involved: Affected are approximately 138 Sumitomo Kelly KDA size 11R22.5 commercial truck tires manufactured between December 4, 2016, and December 17, 2016.

III. Noncompliance: SRUSA explains that the noncompliance is that the required markings on one sidewall of the subject tires were inadvertently omitted and therefore do not comply with paragraph S6.5 of FMVSS No. 119.

IV. Rule Requirements: Paragraph S6.5 of FMVSS No. 119, labelled "Tire Markings" includes the requirements relevant to this petition:

- Each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of S6.5.
- The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire.

V. Summary of SRUSA's Petition: SRUSA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, SRUSA submitted the following reasoning:

SRUSA submits that the condition described above is inconsequential as it relates to motor vehicle safety. The tires were manufactured as designed and meet or exceed all performance requirements of applicable Federal motor vehicle safety

standards. All of the subject tires are marked with the correct information; however, the information appears only on one sidewall. Therefore, the noncompliant condition does not affect motor vehicle safety because the required information is still visible and available to the consumer on one sidewall of the tire. Additionally, SRUSA is not aware of any customer complaints related to this condition. The affected tire mold was immediately corrected and no additional tires were or will be manufactured with this noncompliance.

SRUSA also noted that NHTSA had previously granted petitions for similar tire information noncompliances because of evidence showing that most consumers do not base tire purchases on tire information found on the tire sidewall. Moreover, SRUSA argued that the absence of the markings on one sidewall has no impact on the operational performance of the tires at issue or on the safety of the vehicles on which these tires may be mounted.

SRUSA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

In a supplemental e-mail dated February 24, 2017, SRUSA stated that the subject tires are not asymmetric tires, not labeled with the words "OUTERSIDE" or "OUTER," and there is no designated outer or inner sidewall, thus, the tires may be mounted with the missing information on the inner or outward facing sidewall. In a supplemental e-mail on May 31, 2017, SRUSA informed NHTSA that the TIN is readily available on the sidewall that was marked correctly.

To view SRUSA's petition, analyses, and any supplemental documentation in its entirety you can visit <https://www.regulations.gov> by following the online instructions for accessing the dockets and by using the docket ID number for this petition show in the heading of this notice.

NHTSA'S DECISION:

NHTSA's Analysis: NHTSA has reviewed SRUSA's petition and has determined that the petitioner has not met the burden of persuasion that the subject noncompliance is inconsequential to motor vehicle safety. The omission of the maximum load rating and corresponding inflation pressure on one sidewall of the subject tires presents a safety hazard and is not inconsequential.

The importance of the maximum load carrying capabilities and pressure label for tires was discussed in the FMVSS No. 119 final rule (Nov. 13, 1973; 38 FR 31299). In that document, NHTSA

explained the purpose of labeling tires with the maximum load and pressure as follows:

"The trucking industry questioned the advisability of labeling maximum inflation and load rating on the tire because it appeared to prohibit the adjustment of pressures to road conditions. The purpose of the labeling is to ... warn the user of the tire's maximum capabilities."

Furthermore, in the same rulemaking, NHTSA provided information to manufacturers that it was necessary to have loading and pressure markings on both sidewalls:

"Several manufacturers suggested that labeling appear on only one side of a tire when both sides of the tire, as mounted, will be available for inspection. Accordingly, motorcycle tires must now be labeled on one sidewall only, but the inaccessibility of both sidewalls on trucks and bus tires for visual inspection precludes one-sidewall labeling of these categories."

Since the subject tires can be installed or mounted on a vehicle with either sidewall facing outboard, some of these tires will be mounted on vehicles with the sidewall containing the missing information facing outboard. As the tires at issue are intended for use on heavy vehicles, it is quite possible that the necessary loading and pressure markings could be on a sidewall immediately adjacent to another tire in a dual wheel

configuration. In such a case, the aforementioned markings would only be accessible if the dual wheel assembly is taken apart. Failing to mark the maximum load and corresponding inflation pressure for that load on both sidewalls of the tires puts an enormous burden on end users to ensure that the subject tires will be properly installed, used, and serviced in accordance with the tire's maximum capability. It is reasonable to expect the vehicle user to overload a tire without the explicit guidance provided by the required sidewall markings.

Finally, SRUSA stated that NHTSA had previously granted similar non-compliances, yet, they cited no specific petitions to support this statement. In fact, NHTSA recently denied a petition where a manufacturer omitted the markings designating the maximum load and corresponding inflation pressure for that load, See 82 FR 41678.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that SRUSA has not met its burden of persuasion that the FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, SRUSA's petition is hereby denied and SRUSA is obligated to provide notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Associate Administrator for Enforcement.

BILLING CODE 4910-59-P

[FR Doc. 2018-00222 Filed: 1/19/2018 8:45 am; Publication Date: 1/22/2018]